

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Lit c/o Reza Rahmani  
35 Glendale Road, Amherst, Ma 01002

**Property owner:** Grandonico Properties, LLC  
25 North Pleasant Street, Amherst, MA, 01002

**Date application filed with the Town Clerk:** August 11, 2010

**Nature of request:** To establish a Class II restaurant and bar under Section 3.352.1 of the Zoning Bylaw

**Address:** 41 Boltwood Walk (Map 14A, Parcel 50, B-G Zoning District)

**Legal notice:** Published on September 1, 2010 and September 8, 2010 in the Daily Hampshire Gazette and sent to abutters on September 1, 2010

**Board members:** Tom Simpson, Barbara Ford, Hilda Greenbaum

**Submissions:**

- ZBA application, filed August 11, 2010;
- Project summary & management plan, dated September 8, 2010;
- Proposed Floor Plan – Sheet 1, restaurant arrangement, dated September 3, 2010;
- Proposed Floor Plan – Sheet 2, bar arrangement, dated September 3, 2010;
- Proposed Sign Plan;
- Proposed Menu, dated September 8, 2010;
- ZBA FY2007-00040, Pho Noodle;
- ZBA FY2004-00025, H20;
- ZBA FY2003-00045, Atlantis;
- Design Review Board memorandum dated September 7, 2010;
- Email from applicant, dated September 16, 2010, containing the applicant's review of Section 10.38;
- Letter from Police Chief, dated September 16, 2010;
- Partial copy of the applicant's lease agreement;
- Property owner's easement and lease agreement;
- Existing exterior lighting plan.

**Site Visit:** September 13, 2010

Tom Simpson, Barbara Ford and Hilda Greenbaum met Reza Rahmani and Peter Grandonico Jr. at the site. The Board members observed the following:

- The approximate north property line adjacent to the Knights of Columbus building and east property line adjacent to a Class II restaurant, currently occupied by Thai Corner. It was noted that an easement exists in this area for such uses as access and outdoor dining.

- The exterior facades of the subject commercial space including the location of the double doors, which were under construction, two (2) egress doors on the east facade, and the location of existing lighting fixtures in the vicinity.
- The location of an existing alcove/alley that leads to the adjacent commercial space, in a separate building, currently occupied by a Class I restaurant (Arigato II).
- The interior of the commercial space, which was currently under construction/renovation, including but not limited to the approximate location of the bar, bench seating, storage area, kitchen and restrooms, and dance floor/dining area.
- The interior of the adjacent commercial space, currently occupied by Arigato II, for a relative comparison of décor.

**Public Hearing: September 16, 2010**

Reza Rahmani was accompanied by Arash Hashemkhani and the building owners Kathryn Grandonico and Peter Grandonico, Jr. Mr. Rahmani stated the following:

- He recently leased 41 Boltwood Walk and is seeking approval to open a high end restaurant, bar and nightclub. The establishment would maintain a more city-like atmosphere and would be geared more towards working professionals than a college crowd. The establishment would maintain a strict dress code as described in the Management Plan;
- Some of the updates that have been completed in the space include the installation of a sprinkler system, doubling the size of the entrance door, a fully accessible second means of egress, and a new ventilation hood in the commercial kitchen;
- The restaurant use complies with the definition in Section 12.30 of the Zoning Bylaw and would operate from approximately 11:00 A.M. to 10:30 P.M. At approximately 8:00 P.M. the wait staff would stop taking reservations for seating to provide a 2 ½ hour buffer in order to transition into the bar/nightclub use. The use of the space from approximately 10:30 P.M. to closing would comply with the definition of bar in Section 12.04 of the Zoning Bylaw.
- As part of the transition from the restaurant use to the bar/nightclub use, the tables and chairs in the middle of the floor would be removed and stored in the closet along the perimeter of the back of the building, as shown on the floor plans. The three (3) tables to the left and the four (4) tables to the right of the dining area, in addition to the bar stools, would remain in place during the bar/nightclub use;
- Food will be served during all hours, however, a more limited menu will be served during the later hours;
- Security personnel will be positioned to monitor patron movement at all entrance and exits;
- Staffing levels during the food service time will be 2-3 wait staff, 1 bartender, and 4 kitchen staff. During the later hours, additional security personnel will be added, with as many as 4 inside and 4 outside.

Mr. Simpson referred to items # 10 and #11 on the Management Plan and asked whether 2 wait staff will be sufficient to serve 91 seats under the restaurant operation and whether 1 bartender will be enough under the bar operation. Mr. Rahmani explained that they do not intend to serve 91 seats in the restaurant, however, that is the maximum seating capacity based on the floor area. He concluded that 4 wait staff will probably be needed for 91 seats. He stated that 1 bartender should be sufficient, but that if needed, they would bring in another bartender.

The Board members discussed whether the permit should include a condition with a maximum number of employees to allow the applicant flexibility in distributing them as needed.

The Board noted that it is important to have a realistic expectation of the number of employees needed for the use. The Board concluded that all employees in the public area of the establishment would need to be included in any occupancy calculations. After discussion, the applicant concluded that they would be able to operate the use with a maximum of 14 employees, depending on the occupancy.

Mr. Simpson asked about the cooking ventilation and air conditioning systems. Mr. Rahmani stated that the exhaust fan is designed to reduce odor and is located on top of the roof. He stated that the makeup air fan will be located on the side of the building. Mr. Grandonico stated that the air conditioning system is designed for commercial use and that their HVAC company determined it to be suitable for the size and occupancy of the space.

Ms. Ford expressed concern with the minimal height of the ceilings in the space and asked where the duct work will be and whether it will further interfere with the headroom. Ms. Grandonico stated that the duct work has been designed to be located above the bench seating area so it will not disturb the headroom of any standing patrons.

The Board discussed music. Mr. Rahmani stated that they intend to have DJ's and other recorded music inside. He stated that they intend to hire a sound consultant to assist with the installation of sound proofing equipment and professionally installed speakers to lower the volume in certain areas inside. He stated they would like to vary the type of music occasionally to bring in more diverse crowds. The Board concluded that the applicant could have live music if desired, as long as the sound was not audible outside.

The Board discussed interior and exterior lighting. Mr. Rahmani stated that the pictures submitted represent the intended atmosphere. Staff noted that previous permits prohibited low level lighting. However, the modifications to the building have satisfied requirements of the Building Code to allow for low level lighting to occur. Mr. Rahmani referred to the exterior lighting plan which shows the location of all the existing lighting fixtures in the immediate area.

Ms. Greenbaum asked about trash and recycling, waste oil, snow and litter removal. Mr. Rahmani stated that trash and recycling items are brought to a common dumpster behind 17 Boltwood Walk in cooperation with the landlord. He stated that they are required to remove snow from the doorways, but that removal of snow in the larger easement area (walkway/patio) is the responsibility of the landlord. Mr. Rahmani stated that waste kitchen oil will be stored in the storage room and picked up by rendering company and that their employees will be responsible for inspecting and removing any litter from the immediate area each evening. The Board members noted that the oil must be stored in accordance with any local or state requirements.

The Board discussed the awning and the sign. Mr. Rahmani and Mr. Hashemkhani stated that the awning is approximately 10 feet wide and 3 feet tall and that the location and design was approved by the Design Review Board. Staff noted that according to Section 8.041, the size of the sign is only calculated as the lettering and does not include the awning. The Board concluded that the sign is less than the 10% size requirement.

The Board identified that the outside area designated for waiting patrons will likely occur on the subject property. Ms. Grandonico referenced the easement and noted that the patrons would also be allowed to gather in the easement. The applicant noted that the location of this roped-off waiting area would be situated to not block an emergency egress and such that it does not block the general path of pedestrians.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Simpson seconded the motion and the Board VOTED unanimously to close the public hearing.

**Public Meeting:**

The Board members reviewed the occupancy numbers. The Building Inspector noted that the square footage of the kitchen area was not shown on the plans. The total occupancy includes all employees who will be accessing the public area. It was presumed that the kitchen area was large enough to support the occupancy requirements for the kitchen staff.

**Specific Findings:**

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 - The proposal is suitably located in the neighborhood in which it is proposed, as deemed appropriate by the Special Permit Granting Authority. The proposed space was previously zoned for a restaurant/night club. There are two bars and one night club within 500 yards of the proposed premises and the proposed use is located in a district of primarily commercial and business uses.

10.382 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features. The proposal will not constitute air, water pollution or a flood. The exterior lights are existing and do not violate any town or state regulations. There will be sound proof materials installed within the proposed space to fully insulate the interior sound. The visual impact to the exterior of the building is restricted to the awning/sign, make-up air vent on the facade and mechanical equipment on the roof. The cooking ventilation system will reduce any odors produced and will vent atop the fourth story. The permit will be conditioned to ensure that noise outside the building will not be louder than the normal ambient noise of the area.

10.383 & 10.385 & 10.387 - The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or Pedestrians; reasonably protects the adjoining premise from detrimental uses; and, provides convenient and safe vehicular and pedestrian movement within the site and adjacent property. There are adequate pedestrian walkway areas immediately adjacent to and surrounding the building. Patrons gathering outside will be arranged in a designated area away from emergency exits and so as to not block passing pedestrians. Vehicle traffic is prohibited in the vicinity of the building.

10.384 - Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The building has been equipped with a new sprinkler system; a widened front entrance door; new hood system for the kitchen grill, and fire suppression technology. The proposed space will have three new bathrooms, including a handicap accessible bathroom.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.

The use is within the Municipal Parking District which does not require parking in accordance with Section 7.43 of the Zoning Bylaw and the sign on the awning conforms to the size requirements of Section 8.20 of the Zoning Bylaw.

10.388 & 10.389 - The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products; and provides adequate disposal or storage of refuse, recyclables and sewerage. There are dedicated loading zones adjacent to the property available for all vendors delivering goods to the establishment and surrounding establishments. There is a common dumpster for all the businesses in the area and the applicant will properly store waste oil until pick up by a rendering company. The building is connected to public sewer.

10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. There will be a low voltage lighting fixture added to each side of the entrance which has been approved by the Design Review Board. All other lighting is existing and is not under control of the applicant.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it enhances the quality of life in the downtown. The proposal is suitably located within the downtown business district with other similar uses. The proposal offers a unique restaurant/bar/nightclub use designed to attract a diverse clientele which will help contribute to the creation of a vibrant downtown and is in harmony with the goal of the Master Plan to encourage a “sustainable, attractive town with a vital downtown and viable mixed-use village centers” and helps “promote downtown as a key cultural, commercial and entertainment center”.

#### **Public Meeting – Zoning Board Decision**

Mr. Simpson moved to APPROVE the application with conditions. Ms. Greenbaum seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit for the operation of a Class II restaurant and bar, known as Lit, with alcohol service, under Section 3.352.1 of the Zoning Bylaw, as applied for by Reza Rahmani, at 41 Boltwood Walk (Map 14A, Parcel 50, B-G, MP, DR Zoning District) with conditions.

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TOM SIMPSON

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BARBARA FORD

\_\_\_\_\_  
HILDA GREENBAUM

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2010.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00006, for the operation of a Class II restaurant and bar, known as Lit, with alcohol service, under Section 3.352.1 of the Zoning Bylaw, as applied for by Reza Rahmani, at 41 Boltwood Walk (Map 14A, Parcel 50, B-G Zoning District, MP & DR overlay districts) with the following conditions:

1. The configuration of the floor plan shall be as shown on the plans (Sheet 1 and Sheet 2) prepared by Robinson Engineering, last revised on September 3, 2010 and stamped approved by the Zoning Board of Appeals on September 16, 2010.
2. The operation of the restaurant and bar shall be as described in the Management Plan stamped approved by the Zoning Board of Appeals on September 16, 2010, with the exception that there may be allowed up to 14 employees on-site, as needed.
3. The hours of operation shall be from 11:00 A.M. to 1:00 A.M., seven (7) days per week.
4. During the bar use (as shown on Floor Plan, Sheet 2), the maximum occupancy shall not exceed 198 people, exclusive of the area behind the bar and kitchen. The maximum occupancy shall include any employees (including, but not limited to, security staff) within the public area.
5. During the restaurant use (as shown on Floor Plan, Sheet 1), the maximum occupancy shall not exceed 91 people, exclusive of the area behind the bar and kitchen. The occupancy shall include any employees within the public area.
6. All employees shall be required to complete an alcohol service training, such as ServSafe Alcohol or other comparable course.
7. Dancing and live and/or recorded music is allowed provided that the volume of sound generated by any music shall not exceed the average ambient background levels at the property line.
8. Food shall be available to the patrons for all hours of operation.
9. No alcohol shall be served after 12:45 A.M.
10. The management shall be responsible for maintaining the area immediately in front of and surrounding the restaurant so that it remains clear of litter.
11. Any changes to the exterior signage or lighting shall be reviewed by the Design Review Board and submitted to the Zoning Board of Appeals at a public meeting for review and approval.
12. Refuse and recycling shall be disposed of in accordance with the approved Management Plan. Waste oil shall be stored in secured containers and in a location in accordance with any local or state requirements.
13. Vendor deliveries received by the restaurant shall not occur before 9:00 A.M. or after 3:00 P.M.
14. This permit shall expire upon change of management or ownership of the restaurant.

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Tom Simpson, Chair  
Amherst Zoning Board of Appeals

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DATE